

UNITED STATES DISTRICT COURT

DISTRICT OF MAINE

PAUL DALL,

Plaintiff

v.

THE CHINET COMPANY, *et al.*,

Defendants

Civil No. 97-48-P-C

GENE CARTER, District Judge

MEMORANDUM OF DECISION AND ORDER

Now before the Court is Plaintiff's Motion for Leave to File Second Amended Complaint and Integrated Memorandum of Points and Authorities in Support of Motion for Leave to File Second Amended Complaint ("Plaintiff's Motion") (Docket No. 44). Plaintiff seeks to amend Count VI of his Amended Complaint to add five new claims for breach of fiduciary duty under ERISA to the one specific breach he has already presented in Count VI. Defendants object to Plaintiff's Motion on the grounds of undue delay and unfair prejudice. For the reasons set forth below, the Court will grant Plaintiff's Motion.

Fed. R. Civ. P. 15(a) permits a party to amend a pleading by leave of court and instructs that "leave shall be freely given when justice so requires." In *Foman v. Davis*, 371 U.S. 178, 182 (1962), the Supreme Court stated:

If the underlying facts or circumstances relied upon by a plaintiff may be a proper subject of relief, he ought to be afforded an opportunity to test his claim on the merits. In the absence of any apparent or declared reason -- such as undue delay, bad faith or

dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc. -- the leave should as the rules require, be "freely given."

Leave to grant a motion to amend a complaint lies within the discretion of the trial court. *Id.*

"Where . . . considerable time has elapsed between the filing of the complaint and the motion to amend, the movant has the burden of showing some 'valid reason for his neglect and delay.'"

Stepanischen v. Merchants Despatch Transp. Corp., 722 F.2d 922, 933 (1st Cir. 1983) (citations omitted).

Defendants argue that Plaintiff should not be permitted to amend his Amended Complaint approximately seven months after the November 12, 1997, deadline for filing amendments to the pleadings in this case. Defendants assert that Plaintiff cannot satisfy his burden of justifying his delay because, according to Defendants, Plaintiff has long possessed the information upon which his new claims are based. Defendants further argue that allowing the amendment at this stage in the proceedings will prejudice them, as it will delay the resolution of this matter and potentially alter their strategy at this point.

The discovery deadline in this case was extended to March 2, 1998. *See* Report of Final Pretrial Conference and Order (Docket No. 30) at 2. Plaintiff asserts that certain documents, including the 1992 and 1993 amendments to the Chinnet Plan, were not provided by Defendants until the close of discovery in early March 1998. Plaintiff claims that these documents are the basis for his new claims: without those documents, Plaintiff was unaware of the crux of the new claims; namely, that the plan was improperly amended and that the plan documents as updated did not accurately reflect the content of the actual amendments. Plaintiff filed his Motion for

Summary Judgment on March 19, 1998, less than three weeks after the close of discovery. The Court declined to treat Plaintiff's Motion for Summary Judgment, which raised Plaintiff's new claims of breach of fiduciary duty, as a motion to amend the complaint and directed Plaintiff to file a motion for leave to amend if he so desired.

In light of the proximity between the close of discovery and the filing of Plaintiff's motion for summary judgment, the Court determines that Plaintiff has satisfied his burden of justifying his delay in filing a motion to amend his Amended Complaint. *See C-B Kenworth, Inc. v. General Motors Corp.*, 129 F.R.D. 13, 14 (D. Me. 1990) (permitting an amendment when the plaintiff "only obtained the document on which the proposed amendment is based shortly before making the motion, and because the [proposed] claim is closely related to [the plaintiff's] other claims."). To the extent that Defendants argue that Plaintiff's Motion is futile on the ground that none of the named Defendants is the Plan Administrator, Defendants may do so in a motion; the Court will not decide that issue without the benefit of full briefing from the parties.

Accordingly, it is **ORDERED** that Plaintiff's Motion be, and it is hereby, **GRANTED**. Defendants will have until July 22, 1998, to file a Supplemental Response to Plaintiff's Motion for Summary Judgment with respect to the five new claims raised in Count VI of Plaintiff's

Second Amended Complaint. Plaintiff will then have until August 5, 1998, to file a Supplemental Reply. The Court will reserve its decision on Plaintiff's Motion for Summary Judgment until the new claims raised in the Second Amended Complaint are fully briefed.

GENE CARTER
District Judge

Dated at Portland, Maine this 1st day of July, 1998.